BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED

(Wholly Owned by Government of Karnataka)

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No: BESCOM/GM(DAS,SG &TIC)/DGM(TIC)/AGM (OFC)/AE (OFC) /22-23 / 902

Date 06/09/2023

Clarifications for Queries on tender "Leasing of OFC Network of BESCOM in BMAZ Area"

Tender Enquiry No: BESCOM/GM(DAS&SG)/BC19/202-24/OFC/17 dt 03.08.2023.

Tender No in KPP portal: BESCOM/2023-24/SE0024.

The Reply/Compliance to the Pre-bid queries (by email and hard copy) are tabled below:

Sl. No	Clause Reference/ Page No	Description of existing clause as per RFP	Queries submitted by bidders	Clarification by BESCOM
1	Clause 4.2.1 on page 08 of 47	The UG OFC network infrastructure complies with BSNL specifications.	Please provide the specifications of fiber like connector loss, splicing loss, fiber loss, etc.	The UG OFC fiber will be as per technical standards mentioned in "Recommendation ITU-T G.652"
2	Clause 4.2.4 on page 08 of 47	BESCOM will also grant permission of use for the OH poles for provision of last mile connectivity on demand on non-exclusive basis.	We hereby request BESCOM to provide the details of poles like coordinates or KMZ/KML files.	OH poles will be given only on last mile connectivity basis. However, bidder requested to physically visit the field.
3	Clause 4.3.9 on page 09 of 47	Informing BESCOM in writing on issues arise on UG OFC network. Indemnify BESCOM from all/ any claims arising out of this agreement for the entire tenure of the agreement–The lessee shall indemnify BESCOM of all liabilities including monetary, technical consequent, legal and any other claims (ACCIDENTS) arising out of unlawful activity carried out by the lessee.	We hereby request BESCOM to provide the contact details (email id, telephone) where Lessee can inform BESCOM on issues arising on UG OFC network	Contact details of SPOC BESCOM will be provided after execution of the lease agreement
4	Clause 5.II.A on page 10 of 47	The bidder should have annual average turnover for last 05 years equivalent to ONE Crores in at least two financial years during the last Five years (i.e., during the last 5 preceding financial years i.e. FY 2017-18, 2018-19, 2019-20, 2020-21, 2021-22.)	We request to amend the clause as follows to allow startup companies to bid which were formed in last three years: The bidder should have annual average turnover for last ~~05~~ **03** years equivalent to ONE Crores in at least two financial years during the last ~~Five~~ **Three** years (i.e., during the last ~~5~~ 3 preceding financial years i.e. FY ~~201718, 2018-19~~, 2019-20, 2020-21, 2021-22, **2022-23)**	Tender Condition prevails

5	Clause 7.1, Page 12 of 47	The subject Spare Optical Fibres for bidding shall be used as per existing regulatory norms by the Bidder and BESCOM reserves the right to ensure that there is no violation of the same. The selected Bidder shall also be required to take, prior approval from all the relevant authorities, DoT, TRAI, legal, statutory, etc. as per the applicable laws for operation of business.	Please specify which all required approvals are to be taken from these respective departments.	Tender Condition prevails
6	Clause 7.3, Page 12 of 47 .	All the Fibres as mentioned in the Annexure – "1" are tentative and are subject to change. The Lease Fee from selected bidder shall be charged according to actual length of Optical Fibre measured through Optical Time-Domain Reflectometer (OTDR)	The bid and prices submitted by the bidder are basis the current details of the RFP. We request the deletion that the Fibers mentioned are subject to change.	Actual length of fibre along the feeder may vary on actual basis. It is to be understood that there will be no feeder level and fiber variations in the Annexure. But the change would be with respect to feeder length. Tender Condition prevails
7	Clause 9, Page 23 of 47	I have studied all the Bidding Documents carefully. We understand that except to the extent as expressly set-forth in the lease agreement, we shall have no claim, right or title arising out of any documents or information provided to us by BESCOM or in respect of any matter arising out of or relating to the Bidding Process including the award of contract for lease.	BESCOM to clarify the scope of this requirement. The parties may mutually discuss and amend the Contract Agreement. Please note that the RFP read with the Contract Agreement does not contain a number of standard provisions which are typically included in such agreements.	If any such new contractual provisions are to be added, amendment will be issued and such provisions are applicable to all the bidders.
8	Clause B(III), Page 30 of 47 .	The Lessee confirms having examined the potential locations in detail and fully understands and comprehends the technical requirements for utilisation of optical fibres. The Lessee also confirms full satisfaction as to the business viability of Leasing of fibres and premises and hereby voluntarily and unequivocally agrees not to seek any claim, damages, compensation or any other consideration, whatsoever on this account. Lessee also confirms having made independent assessment of present and future market potential and no future claim what so ever regarding change in market circumstances shall be used by it as an alibi or excuse for non-payment of Lease Fee and other amounts due to BESCOM under this Lease Agreement.	We request the modification of this clause as stated below: The Lessee confirms having examined the potential locations as reasonable practicable and understands and comprehends the technical requirements for utilisation of optical fibers. The Lessee also confirms satisfaction as to the business viability of Leasing of fibers and premises.	Tender conditions prevails
9	Clause 2.3 (i), Page 32 of 47	Indemnify BESCOM from all other issues which is inclusive of liabilities including monetary and technical consequent to any unlawful activity carried out by the lessee	We request deletion of this clause from the scope of Lessee as scope shall only cover obligations of Lessee that are mandatorily required to fulfilled regardless of any occurrence.	Tender conditions prevails

10	Clause 2.3 (j), Page 32 of 47	For the purpose of agreement between BESCOM and lessee, all actions/inactions by the other parties (Telecom service providers (TSP's)/ Internet Service Provider/Unified License) shall be construed as actions/inactions of the lessee and the lessee declares that it is bound by any action/inaction of the other parties and keeps BESCOM indemnified of any liability that may arise from such actions/inactions of the other parties and also from the effect of any litigation that may arise between the lessee and the other parties	We request the deletion of this clause as any obligations of third parties shall not obligate the Lessee to remain liable and indemnify BESCOM for the same. Indemnities shall be mutually agreed upon between the Parties at the time of execution of Lease Agreement.	Please refer amendment uploaded
11	Clause 2.3 (l), Page 32 of 47	BESCOM shall not take any responsibility for any accident to men or material arising out of or due to the presence of any electrical assets in the vicinity of the lessee's undertaken activities; if any accident takes place, involving the labour, in relation to any activity involving the lessee's laid OFC, the respective lessee shall be responsible	We request the deletion of this clause as the same does not seem to be scope of the Lessee or any activity that the Lessee is required to perform under the Lease Agreement. Disclaimers shall be agreed upon at the time of execution of Lease Deed.	As clause mentions it is applicable only for activity undertaken by Lessee. Tender conditions prevails
12	Clause 2.3 (o), Page 32 of 47	The lessee shall be liable for any damage to the leased assets after the handover is done if attributable to lessee; the lessee shall replace the damaged asset at their own cost, by seeking relevant permissions from BESCOM and other authorities before undertaking any restoration/repair activity. In case of damage to BESCOM property (such as chambers, poles), during lessee's activity, the lessee shall restore the same to its original conditions at its own cost	We request the deletion of this clause as the same does not seem to be scope of the Lessee or any activity that the Lessee is required to perform under the Lease Agreement.	It is already mentioned that damage are to be recovered from lessee if the damage is attributable to lessee. Tender conditions prevails
13	Clause 3.4, Page 33 of 47	The Lessee also confirms that it has fully analysed to its fullest satisfaction, business viability of the Lease and hereby voluntarily and unequivocally agrees not to seek any claim, damages, compensation or any other consideration, whatsoever on this account.	We request the modification of this clause to as stated below: The Lessee also confirms that it has analysed to its fullest satisfaction, business viability of the Lease.	Tender conditions prevails.
14	Clause 4.3, Page 33 of 47	Lease Agreement shall be valid for a period of Ten (10) years starting from the Commencement of Lease Agreement, unless otherwise terminated as provided in Termination clause subject to a lock-in period of Six (6) years	We request that the duration of the Lease Agreement be amended to 15 years with a lock-in duration of 06 years.	Tender conditions prevails.

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15	Clause 6.6, Page 34 of 47	In case of non-payment of Lease fee and other dues, the Lessee voluntarily agrees to permit the Lessor "BESCOM" to disconnect all OFC related services. The Lessee agrees and also undertakes not to make any claim, compensation or any other consideration whatsoever, which may arise due to such disconnection and sealing by the Lessor	We request the modification of this clause to as stated below: In case of non-payment of Lease fee for a duration of 60 days from the date such payment becomes due, the Lessee may agree to permit the Lessor "BESCOM" to disconnect all OFC related services.	Grace period is given for payment defaults under various provisions of this agreement. However, BESCOM reserves the right to disconnect the services subject to those terms and conditions. Tender conditions prevails.
16	Clause 6.10, Page 34 of 47	Non-payment of Lease Fee and other dues within the prescribed date shall constitute a Material Breach of Contract and Lessee Event of Default under this Agreement and shall entitle BESCOM to terminate the Lease Agreement as per provisions stipulated in this Agreement. Besides, the Lessee shall pay an interest of 18 percent per annum on the amounts of Lease Fee and other dues payable remaining outstanding after the due date and falling in arrears. Interest shall continue to accrue on compounding on monthly rolling basis until the Lease Fee and other dues are finally paid. Such interest shall be charged for the actual day(s) of delay in payment.	The parties may mutually discuss and amend the Lease Agreement. Prescribed date/due date of the payment shall be clarified in the Agreement before it is considered as material breach. A cure period for any material breach shall also be agreed upon between the Parties.	Cure period is already included in the contract. There will be no change in T&Cs of this agreement after the closure of bidding process. Tender conditions prevails.
17	Clause 6.10, Page 34 of 47	In case payment is not made by due date, a 15 day notice to cure the Lessee's Event of Default shall be issued. In the event of Lessee failing to cure the default, BESCOM shall be entitled to terminate the Lease with 30-day notice and shall be free to forfeit Interest Free Performance Security and take such other action available to it under this Agreement and as per Law.	BESCOM to clarify that in such an event, only the pro rata Interest Free Performance guarantee shall be forfeited by BESCOM. Also, termination of the lease agreement shall be subject to a mutually agreed cure period between the parties.	In such case full interest free security deposit will be forfeited. Cure period of for such payment default is already mentioned in the contract. There will be no change in T&Cs of this agreement after the closure of bidding process. Tender conditions prevails.
18	Clause 6.12, Page 35 of 47	In case of non-payment of Lease fees and other dues, the Lessee voluntarily agrees to permit the Lessor/"BESCOM" to disconnect all OFC related services. The Lessee agrees voluntarily and also undertakes not to seek any claim, compensation or any other consideration whatsoever, which may arise due to such disconnection and sealing by the Lessor.	We request the modification of this clause to as stated below: In case of non-payment of Lease fees and other dues, the Lessee voluntarily agrees to permit the Lessor/ "BESCOM" to disconnect all OFC related services.	Tender conditions prevails.
19	Clause 10, Page 36	Material Breach of Contract/Event of Default	Any event to be considered as a material breach or event of default shall be subject to a cure period mutually agreed between the Parties and any occurrence or omission to be considered as an Event of Default or Material Breach shall be mutually agreed between the Parties.	Cure period for certain cases of material breach are provided. Tender conditions prevails.

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20	Clause 11, Page 37	Termination Rights	Termination rights shall be mutually available to both parties and shall be agreed upon at the time of execution of Lease Agreement.	Tender conditions prevails.
21	Clause 12, Page 38	Surrender	We request deletion of this clause since the termination rights of both parties shall be mutually agreed upon at the time of execution of the Agreement and Lessee shall have an exit right immediately after the expiry of the lock-in period and shall not be made to serve an additional 180 day period. Such a right to exit shall not attract additional financial penalties including without limitation the forfeiture of security deposit.	Tender conditions prevails.
22	Clause 15.5, Page 40 of 47	The Lessee hereby indemnifies BESCOM against any loss, damage or liabilities arising as a result of any act of omission or commission on part of Lessee or on part of its personnel or in respect of non-observance of any statutory requirements or legal dues of any nature	We suggest deletion of this clause as it is already covered as material breach.	Tender conditions prevails.
23	NO Clause reference – New Clause Requested	Insurance by BESCOM	It is requested that BESCOM maintains third party liability insurance, professional indemnity and public liability insurance, of prescribed amounts which has not been included under the agreement.	Tender Condition Prevails.
24	NO Clause reference – New Clause Requested	Limitation of liability	There is no provision on limitation of liability. It is requested that at least indirect damages should be excluded from both party's liability under the agreement. Further the aggregate liability of each party to be capped at the amounts payable by under the Agreement.	Tender Condition Prevails
25	NO Clause reference – New Clause Requested	Anti-bribery and corruption:	It is requested that clause which prohibits any acts which are punishable under the UKBA, USFCPA, POCA, no conduct with sanctioned persons etc to be inserted	Please Refer fraud & Corruption clause : 6 (Page 12 of 47) Tender Condition Prevails

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26	NO Clause reference – New Clause Requested	Representations and Warranties:	BESCOM to note that the standard clause on representations and warranties of both party which includes incorporation, power and authority, no contravention of charter documents or applicable law and no pending litigations have not been included. Further, standard representations on maintenance of fiber, fiber provider's responsibility to obtain all licenses and approvals have also not been included. It is requested that such provisions are included.	Similar provisions are included in the RFP and draft contract agreement. Tender conditions prevail.
27	NO Clause reference – New Clause Requested	Effect of change in law:	The RFP should provide that parties should mitigate the impact of any change in law. In the event of issuance of any rule, regulation, notification or order of a government authority that adversely affect the lease rights, the parties should mutually seek to mitigate such effect.	Please Refer amendment uploaded
28	NO Clause reference – New Clause Requested	Re-routing of fiber:	BSECOM to clarify the mechanism and responsibility in case of re-routing or – redesigning. This should only be permitted in case of government directions in this regard and in such case, BSECOM should be required to notify the bidder in advance and provide an alternate link.	Please Refer Termination clause : 11.2 (Page 38 of 47
29	NO Clause reference – New Clause Requested	Alienation of fiber	The RFP should be amended to include obligation on the grantor to not alienate the fiber as the IRU fee is also to be paid in advance.	Tender conditions prevails.
30	NO Clause reference		Is it possible for us to acquire a minimum of one Fiber Pair from BESCOM's OFC network?	Yes, Please Refer Clause: Scope of Bidder /Lessee : 4.3 , Page(8 of 47) and Evaluation of Bids : 10.4 , page (19 of 47)
31	NO Clause reference		Are there any restrictions or preferences regarding the length of the span we can lease from BESCOM's OFC route	There are no preferences regarding the length. Bidder shall pay for the entire feeder length as per actuals. Please refer Clause : payment terms :6.3, Page(34 of 47)

32	NO Clause reference		Do we have the flexibility to lease any feeder route from a region of our choice, based on our specific requirements	Yes Please Refer Clause: Scop of Bidder /Lessee : 4.3 , Page(8 of 47) and Evaluation of Bids : 10.4 , page (19 of 47)
33	NO Clause reference		Can we get space of Colocation for our equipment installation in case of need	There is no provision for the space in BESCOM jurisdiction. Tender Conditions Prevails.
34	NO Clause reference		Currently We are in the process of studying the requirements & preparing the required documents for Bid. Request you to kindly extend the last date of the bid from **8th Sep 2023** to **8th Oct 2023** so that we can complete all the required formalities before bid closing date.	Please Visit KPP portal.
35	SL.No No 3.6 & 3.9, of NIT, Page 5 of 47	Also, the permission of use towards Overhead (OH) electric poles by the Lessee will be limited to the purpose of 'Last Mile Connectivity (LMC)' on demand basis, by way of laying / drawing dark fiber by the selected bidder from the nearest tapping point to the end user premises abiding by the rules, regulations and safety standards prescribed by relevant authorities amended from time to time,	As per Sl. No 3.6 & 3.9, it is understood that OH electric poles would also be facilitated by BESCOM for laying of last mile connectivity OFC by bidders. In this regard, it is requested to provide the feeder wise over head electric poles location details for detailed plan of action to be taken at bidder's end for tapping the bidder's nearest tapping point.	OH poles will be given only on last mile connectivity basis. However, bidder requested to physically visit the field.

Approved by Director Technical, BESCOM

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06/09/23